

6 November 1975

MEMORANDUM FOR: Director of Central Intelligence

SUBJECT: Arrangements with the Senate Select Committee

1. I have reviewed the President's letter to Senator Church (New York Times, 5 November 1975) on the assassination report with the six Deputies. There was complete consensus that the words used in the letter in fact assert that the report is classified within the specific standards of Executive Order 11652. We know that Church and the Senate Select Committee assert the right to declassify. On the other hand, the Department of Justice has asserted that under the Constitution the Congress has no authority to declassify information classified by the Executive. In a statement of last year before the Governmental Relations Subcommittee of the Committee on Government Operations, Senate, Robert G. Dixon, Jr., then Assistant Attorney General, Office of Legal Counsel, said:

It would seem to follow in light of the President's special powers over foreign relations and national defense that the power and duty to classify national security information is equally within the executive domain. Moreover, because we are dealing with national security information, the executive claim to control the declassification decision is even stronger.

Dixon also stated that provisions in proposing legislation which would confer upon a congressional committee "the power ultimately to determine whether national security information should be classified or declassified would be unconstitutional." The position of the Department of Justice is strongly buttressed by many decisions of the Supreme Court.

2. It seems to me that, not only on the assassination report but on any other report or documents to be made public by the Senate Select Committee, the Executive branch (hopefully the President but possibly CIA unilaterally) could assert the following in negotiations or by letter:

a. The assassination report (or document) is classified.

OGC Has Reviewed

MORI/CDF

b. There is a serious legal question concerning the authority either of the Senate Select Committee or the Senate as a whole to declassify any document determined by the Executive to be classified.

c. Because of the seriousness of the issue involved, any document proposed to be released should be reviewed by the Executive branch so that it could advise the Senate Select Committee of its position. (As we know, in many cases the issue as to what is classified and what can be deleted to make it non-classified is easily resolved.)

d. Where the Senate Select Committee and the agency concerned are in disagreement, the issue should be presented to the President (as in the Pike formula) for Presidential certification of classification.

e. Where the President certifies classification, the Senate Select Committee would not act unilaterally but reserves its right to go to court.

3. I think our position is very strong politically, as well as legally, in asserting (publicly if necessary) that under law the Senate Select Committee cannot declassify and they should have no concern about having not only that issue but the issue of classification resolved by the courts. It is extremely doubtful that the courts would overrule on the issue of classification. There appears to be every likelihood that the courts would rule that the Senate Select Committee may not under the Constitution declassify what the President certifies is classified.

STATINTL

JOHN S. WARNER
General Counsel

cc: DDO
DDA
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D/DCI/IC
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C/Review Staff

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COMMENT	FILE	RETURN	
CONCURRENCE	INFORMATION	SIGNATURE	
Remarks: <p>This is the matter I mentioned at this morning's meeting. I thought it might be useful for discussion at the 5:30 meeting today.</p> <div style="border: 1px solid black; width: 150px; height: 50px; margin: 10px auto;"></div> <p style="text-align: center;">John S. Warner</p> <p style="font-size: 2em; margin-top: 20px;">Doc</p>			
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